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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT**

**DIVISION FOUR**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON GREEN,

Defendant and Appellant.

A155744

(Solano County  
Super. Ct. No. FCR340521)

The trial court revoked appellant Jason Green's parole based on credible evidence that his wife kept a gun in their bedroom closet without his knowledge. Because, as the attorney general concedes, appellant violated his parole only if he had knowledge that the gun was present, we reverse.

**BACKGROUND**

Appellant was paroled in November 2016, with the requirement that he not "own, use, have access to or have under [his] control" any firearm or ammunition. Appellant's wife, Niema Green, had purchased and registered in her own name a Smith & Wesson semiautomatic pistol in 2010, which she removed to her godmother's home when appellant was paroled. But in early September 2018 after receiving separate threats against her son and herself, Ms. Green retrieved the gun and stored it, with some ammunition, in an unlocked box on a rack in the master bedroom closet, behind her clothes. Most of the clothes in this closet belonged to Ms. Green; appellant stored his primarily in a closet in another bedroom. Ms. Green never told appellant that she had

brought the gun back into the house, nor that she was storing it in the closet, and he was unaware that it was there. These facts were all testified to at appellant's parole hearing—where appellant, his wife, and her godmother took the stand—and the trial court “found the witnesses credible.”

During a parole search on September 24, 2018, FBI agent Rodney Gauthier found the gun and ammunition in the box in the back of Ms. Green's closet. Agent Gauthier had to push aside some shirts before he could see the box. Appellant was promptly arrested and, at the conclusion of a contested parole revocation hearing, remanded “to the custody of the Department of Corrections and Rehabilitation [CDCR] and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration.” (See Pen. Code, § 3000.08, subd. (h).) The trial judge found appellant in violation of his parole, in spite of finding the witnesses credible, because he concluded there was no “knowledge requirement” to prove “access,” and that the evidence otherwise established appellant had access to the firearm. This timely appeal followed.

### **DISCUSSION**

The parties agree that the trial court erred but disagree on the proposed remedy. Citing *People v. Hall* (2017) 2 Cal.5th 494, 500–502 (*Hall*), the attorney general concedes that “appellant's weapons restriction should have been construed to read that appellant ‘shall not [knowingly] own, use, have access to, or have under [his] control: (a) any type of firearm, . . . or any ammunition which could be used in a firearm . . . .’ ” The attorney general also concedes that the trial court failed properly to consider this mens rea requirement. But the attorney general would have us remand so that the trial court can now consider “whether appellant willfully violated [his] parole.”

Like appellant, we see no need for a remand here. The trial court has already made the dispositive factual finding—that the witnesses who testified appellant lacked knowledge that the firearm was in the back of the closet were credible. In light of that finding, there is no issue to be determined on remand. If appellant did not know there was a firearm in the closet, then he did not willfully violate his parole (*Hall, supra*,

2 Cal.5th at 500-502; *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186), and the attorney general does not argue otherwise.

### **DISPOSITION**

We reverse the judgment revoking appellant's parole and remanding him to CDCR custody for future parole consideration. Appellant should be immediately released from prison and placed back on parole.

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Tucher, J.

We concur:

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Pollak, P.J.

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Brown, J.